

EXHIBIT

3

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

MARJORIE ACEVEDO,

Plaintiff,

v.

TEUPEN NORTH AMERICA, INC.,

Defendant.

Civil Action No. 3:20-CV-00518-FDW-DSC

DECLARATION OF SHALANNA L. PIRTLE

I, Shalanna L. Pirtle, make this declaration pursuant to 28 U.S.C. § 1746 and state truthfully as follows:

1. I am over the age of 18. I am of sound mind, capable of making this declaration, and personally acquainted with the facts stated herein.
2. I am a partner at Parker Poe Adams & Bernstein LLP (“Parker Poe”).
3. Parker Poe represented Teupen North America, Inc. (“Teupen”) in a lawsuit filed against it by former Teupen employee David Kesser (“Kesser”). I was counsel for Teupen in that case.
4. Michelle L. Gessner (“Gessner”) represented Kesser in his lawsuit. It is my understanding that Gessner represents the plaintiff, Marjorie Acevedo (“Acevedo”), in this case as well.
5. On January 7, 2020, Ms. Gessner forwarded an email to me that she had sent directly to Teupen’s chief executive officer, Martin Borutta, which attached a litigation hold letter. Ms. Gessner’s email asked if I had “authority to discuss on behalf of Teupen.” A true and correct copy of the email is attached as **Exhibit 1**.

6. On January 9, 2020, I emailed Ms. Gessner back, stating that “it does not appear we will be representing Teupen on this matter.” A true and correct copy of this email is attached as **Exhibit 2**.

7. I have not exchanged any emails or written correspondence with Ms. Gessner regarding Acevedo’s claims other than the emails attached as Exhibits 1 and 2.

8. I have reviewed the declaration that Ms. Gessner submitted in support of Acevedo’s motion for sanctions against Teupen in the above-referenced case, D.E. 11-3.

9. In paragraph 4 of her declaration, Ms. Gessner states,

Thereafter, I spoke with Ms. Pirtle directly to determine if she knew who would be representing Teupen, but she did not know. In this conversation, I mentioned to her that Ms. Acevedo had a laptop she needed to return to Teupen. Ms. Pirtle told me that she did not know who would be representing Teupen and that Teupen would contact me directly.

10. I had Parker Poe’s IT personnel perform a search of the firm’s phone records for January 1, 2020 through January 31, 2020 for records of calls to or from Ms. Gessner’s main office line (704-234-7442) and Ms. Gessner’s cell phone (704-228-4535). There are no records of any calls between Ms. Gessner and me. Furthermore, I have no recollection of ever speaking by phone with Ms. Gessner regarding the Acevedo case.

11. Parker Poe’s records reflect that four calls to and from the telephone numbers in paragraph 10 belonging to Ms. Gessner were found:

- a. Two calls by Partner Keith Weddington to Ms. Gessner, one to her cell phone and one to her office line, on January 6, 2020;
- b. One call by Mr. Weddington to Ms. Gessner on January 7, 2020; and
- c. One call from Ms. Gessner to Mr. Weddington on January 7, 2020

I was not present for any of the above telephone calls.

12. Mr. Weddington and Ms. Gessner have been opposing counsel on several matters in which I was not involved. Mr. Weddington has not performed work for Teupen. Ms. Gessner's declaration does not indicate she had any communications with Mr. Weddington about Teupen.

13. I have no recollection of Ms. Gessner ever telling me, in any medium, that "Ms. Acevedo had a laptop she needed to return to Teupen" or any words to that effect.

14. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER THE DECLARANT SAYETH NOT.

Executed on January 4, 2020.


Shalanna L. Pirtle

EXHIBIT

1

From: [Michelle Gessner](#)
To: [Pirtle, Shalanna L.](#)
Subject: Fwd: Marjorie Acevedo v. Tuepen North America - Litigation Hold Notice/Legal Representation
Date: Tuesday, January 7, 2020 7:56:35 PM
Attachments: [2020-01-07 - ACEVEDO - Litigation Hold Letter.pdf](#)

Caution: External email

Shalanna - I hope you and yours are doing well. I am sending you a courtesy copy of the attached correspondence just sent to Tuepen re former employee Marjorie Acevedo. Please let me know if you have authority to discuss on behalf of Tuepen.

Many thanks.

Best, Michelle



.....
Charlotte Office: 602 East Morehead Street • G.G. Galloway House • Charlotte, NC 28202

Tel: 704.234.7442 • Fax: 980.206.0286

.....
Wilmington Office: 1213 Culbreth Drive, Suite 426 • Wilmington, NC 28405

Tel: 919.218.8268 • Fax: 980.206.0286

.....
www.mgessnerlaw.com

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----- Forwarded message -----

From: Michelle Gessner <michelle@mgessnerlaw.com>

Date: Tue, Jan 7, 2020 at 7:54 PM

Subject: Marjorie Acevedo v. Tuepen North America - Litigation Hold Notice/Legal Representation

To: <mborutta@teupen.com>

Mr. Borutta - Please see attached correspondence.

Regards, Michelle Gessner

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January 7, 2020

Via Email and Certified Mail – Return Receipt Requested

Mr. Martin Borutta, CEO
Teupen, North America, Inc.
10701 Southern Loop Boulevard
Pineville, North Carolina 28134

Re: Ms. Marjorie Acevedo v. Teupen North America, Inc.

Dear Mr. Borutta:

Please be advised that GessnerLaw, PLLC has been retained by Ms. Marjorie Acevedo, to represent her in her claims of unpaid wages, wrongful discharge, discrimination and retaliation against Teupen North America, Inc. (“Teupen”). Please direct all future communications regarding Ms. Acevedo to the undersigned’s attention at the address and telephone number provided below.

This letter serves as a formal notice of your ongoing legal duty to preserve any and all information relevant to the facts surrounding these claims. Teupen North America, Inc. has a duty at all times to preserve relevant data.

Your duty to preserve evidence includes, at a minimum, the following:

- business records - including any and all records regarding Ms. Acevedo, including but not limited to payroll records, pay stubs, personnel files, including electronic data;
 - paper, digital, or electronic files;
 - any and all company emails, text messages, voice mail messages or other communications regarding Ms. Acevedo’s performance and/or termination;
 - data generated by and or stored on any of the company's and/or its employees' computers and storage media (e.g., hard disks, floppy disks, CDs, backup tapes, etc.);
 - any other electronic data such as: voice mails, text messages, emails, digital/analog recordings, instant messages; and
-
- any related physical evidence;
 - any form of video recordings (you must prevent the automatic deletion of video footage at all properties by preprogrammed deletion cycles).

Violations of the legal duty described in this notice can result in severe sanctions being imposed by the Court for spoliation of actual evidence or potential evidence.

Mr. Martin Borutta, CEO – Re: Marjorie Acevedo

Page 2 of 2

January 7, 2020

If Teupen North America, Inc. is interested in discussing possible early resolution of this matter, please let me know by January 9, 2020, otherwise we will proceed with litigation.

Sincerely,

GESSNERLAW, PLLC

/s/ L. Michelle Gessner

L. Michelle Gessner

LMG/ab

cc: Marjorie Acevedo

EXHIBIT

2

From: Pirtle, Shalanna L. <shalannapirtle@parkerpoe.com>
Sent: Thursday, January 9, 2020 12:07 PM
To: 'Michelle Gessner' <michelle@mgessnerlaw.com>
Subject: RE: Marjorie Acevedo v. Tuepen North America - Litigation Hold Notice/Legal Representation

Hi Michelle,

Same to you! At this point, it does not appear that we will be representing Teupen on this matter. Perhaps there will be another opportunity for us to work together in the future!

Shalanna

From: Michelle Gessner <michelle@mgessnerlaw.com>
Sent: Tuesday, January 7, 2020 7:56 PM
To: Pirtle, Shalanna L. <shalannapirtle@parkerpoe.com>
Subject: Fwd: Marjorie Acevedo v. Tuepen North America - Litigation Hold Notice/Legal Representation

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Shalanna - I hope you and yours are doing well. I am sending you a courtesy copy of the attached correspondence just sent to Tuepen re former employee Marjorie Acevedo. Please let me know if you have authority to discuss on behalf of Teupen.

Many thanks.

Best, Michelle



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